

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5688**

**PETITION OF CALEB E. BAKER**  
(Hearing held December 12, 2001)

**OPINION OF THE BOARD**  
(Effective date of Opinion, January 16, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The petitioner proposes to construct a two-story addition that requires a 0.91 foot variance as it is within 6.09 feet of the side lot line and a two-story addition that requires a 1.45 foot variance as it is within 5.55 feet of the side lot line. The required side lot line setback is seven (7) feet.

The subject property is Lot 14, Block E, Maplewood Subdivision, located at 9305 Jesup Lane, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00566065).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a two-story addition in the southern side yard and a two-story addition in the northern side yard.
2. Gerald Couto, the petitioner's architect, testified that the variances are needed as a result of the narrowness and shape of the lot, and that the requested variances are the minimum reasonably necessary. (Transcript of Testimony (Tr.) at 9).
3. Mr. Couto testified that the northern property line is parallel to the residence, but that the southern property line is at an angle. (Tr. at 11). Mr. Couto testified that the house was built in the 1940s and that the rooms are all quite small and that the variance request is to take a house that was built in the 1940s for family living styles and to add to allow families of the 2000 to be able to live. (Tr. at 11, 12).
4. In response to questions from the Board, Mr. Couto testified that if the variance requested for the southern side yard were to be reduced, the space would be a little bit awkward, both in the interior and a probably a little bit more so on the exterior. (Tr. at 15).
5. Mr. Couto also testified that the variance required for the northern side yard would not be detrimental to the neighbors. (Tr. at 17). The petitioners testified that they

have spoken with their neighbors and that the neighbors are very supportive of the variance request. (Tr. at 18).

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot contains no topographical or other conditions peculiar to their property. The petitioner's lot is similar in size to neighboring Lots 11 and 13. Neighboring Lot 8 is slightly shorter, and has an angle similar to the subject property. See, Exhibit No. 7.

The Board further finds that the construction, as proposed, would be built in the widest section of the lot and that any narrow characteristics the property may have do not create the need for the requested variance.

As the petitioner has failed to meet the first requirement of Section 59-G-3.1 of Montgomery County Zoning Ordinance for the grant of a variance, the Board did not consider the other standards found in that section. Accordingly, the requested variances: of 0.91 feet from the required seven (7) foot side lot line setback for the construction of a two-story addition and of 1.45 feet from the required seven (7) foot side lot line setback for the construction of a two-story addition are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Donald H. Spence, Jr., Chairman, with Louise L. Mayer and Angelo M. Caputo, in agreement, the Board adopted the foregoing Resolution. Board member Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 16th day of January, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.